

## **TITLE 5. SCHOLARSHARE INVESTMENT BOARD**

### **NOTICE OF PROPOSED RULEMAKING**

Notice is hereby given that the ScholarShare Investment Board proposes to amend Sections 30950, 30953, 30954, 30958 and 30959 of the existing Golden State ScholarShare Trust Program.

### **PUBLIC HEARING**

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a public hearing if it receives a written request from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period, if no public hearing is requested, the ScholarShare Investment Board, on its own motion, may adopt the proposal substantially as set forth without further notice.

### **WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m.** on **April 14, 2003**. The Board will consider only comments received at the Board's offices by that time. Written comments or petitions requesting a public hearing should be directed to:

Wanda Wallis, Program Analyst  
ScholarShare Investment Board  
915 Capitol Mall, Suite 219  
Sacramento, CA 95814  
Telephone – (916) 651-8826  
Fax – (916) 651-6382  
E-mail – [wwallis@treasurer.ca.gov](mailto:wwallis@treasurer.ca.gov)

### **AUTHORITY AND REFERENCE**

Education Code Section 69981(d) authorizes the Board to adopt regulations it deems necessary to implement the Golden State ScholarShare Trust Act. The Board proposes changes to the regulations in order to implement, interpret and make specific Sections 69980, 69981, 69982, 69983, 69985, 69986, 69989, 69990, 69993.5 and 69994 of the Education Code, Sections 3914 and 3990-3925 of the Probate Code, Section 24306 of the Revenue and Taxation Code, and Sections 117, 152, 501 (c) (3) and 529 of the Internal Revenue Code.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The ScholarShare Investment Board is statutorily charged with administering the Golden State ScholarShare College Savings Program. The ScholarShare program is a qualified tuition program as defined in Section 529 of the Internal Revenue Code (IRC). The program began accepting deposits in October 1999 from individuals who wanted to save money to pay the qualified higher education expenses of a designated beneficiary. The Board approved regulations necessary for the effective administration of the program at that time.

On September 9, 2002, Assembly Bill 3045 was signed into law as an urgency statute, making a variety of technical and federal conforming changes to the ScholarShare program. Prior to the passage of AB 3045, Education Code Section 69983(g) required the Board to collect a fine from account holders who closed their accounts and used the funds for purposes other than educational expenses. Federal and State laws have now been changed and instead of individual states collecting these penalties the Internal Revenue Service will collect them in the form of a tax. At its December 16, 2002 meeting, the Board voted to approve regulations to remove the payment penalty requirement. Administrative terms are also being clarified in order to more appropriately define their meaning and to conform to the Federal Patriot Act of October 2001.

1. Education Code Section 69980, Internal Revenue Code Section 529, and the California Code of Regulations Section 30950 define certain terms used in the administration of qualified tuition programs. The existing regulations define the term "cash" as checks, money orders, cashier's checks, rollover distributions, payroll deduction, automatic contribution plan, and electronic funds transfers. The proposed regulatory action revises the definition of the term "cash" and removes the option of accepting money orders or cashier's checks as a method of payment of investment funds.
2. Existing regulations specify in Section 30953(a) that a cancellation penalty of one percent of the portion of an account owner's distribution constituting earnings shall be imposed upon cancellation of a participation agreement between an account owner and the ScholarShare Trust. The proposed regulatory action deletes the penalty requirement in order to conform to the provisions of AB 3045.
3. The term "maximum contribution limit" referenced in Sections 30953(c) and 30958(a) and (d) of the existing regulations is being changed to "maximum account balance limit" to more clearly define the term as it relates to other documents and materials within the program.
4. Subsections of existing regulations in Section 30953 are re-lettered for clarity.
5. Existing regulations in Section 30954(d) require the Board to pay an amount of a requested distribution to an account owner, minus the amount of the payment penalty required in paragraph (a) of Section 30953. Since the payment penalty

provision has been deleted, the proposed regulatory action removes the stipulation pertaining to the payment penalty because it is no longer applicable.

6. Existing regulations establish in Section 30959(d) that the State of California would not be subject to the one percent penalty provision set forth in Section 30953 (a) when it opens a qualified scholarship account for a beneficiary. With the removal of the payment penalty provision in Section 30953(a), Section 30959(d) is no longer necessary and is being deleted.
7. Subsections of existing regulations in Section 30959 are re-lettered for clarity.

#### DISCLOSURES REGARDING PROPOSED ACTION

The Board has made the following determinations:

- Mandate on local agencies and school districts: None.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630: None
- Other non-discretionary costs or savings imposed on local agencies: None.
- Cost or savings to any state agency: None.
- Cost or savings in federal funding to the state: None.
- Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: The Board has initially determined that the proposed regulations will not have such an impact.
- Cost impacts on a representative private person or business: The Board is not aware of any costs impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Significant effect on housing costs: None.
- Impact on Jobs/New Businesses: the Board has determined that this regulatory proposal will not have significant impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

#### SMALL BUSINESS DETERMINATION

The Board has determined that these proposed regulations do not affect small business. The proposed regulations identify no actions required of or referencing small business.

## CONSIDERATION OF REASONABLE ALTERNATIVES

In accordance with Government Code Section 11346.5, Subdivision (a) (13), the Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

## CONTACT PERSONS

Inquiries concerning the proposed administrative action may be addressed to:

Wanda Wallis, Program Analyst  
ScholarShare Investment Board  
915 Capitol Mall, Suite 219  
Sacramento, CA 95814  
Telephone – (916) 651-8826  
Fax – (916) 651-6382  
E-mail – [wwallis@treasurer.ca.gov](mailto:wwallis@treasurer.ca.gov)

The following person is designated as a backup contact person:

Jennifer DuCray-Morrill, Acting Executive Director  
ScholarShare Investment Board  
Telephone – (916) 653-3354

Questions on the substance of the proposed regulations may be directed to either Ms. Wallis or Ms. DuCray-Morrill.

Please direct requests for copies of the proposed text of the regulations, the initial statement of reasons, or other information upon which the rulemaking is based, to Ms. Wallis at the above address.

## AVAILABILITY OF THE STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address during normal business hours. The file may also be accessed on the website indicated in this Notice. As of the date this Notice is published in the Notice Register, the rulemaking file includes this Notice, the proposed text of the regulations, and the Initial Statement of Reasons.

## AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the forty-five (45) day written comment period and following a public hearing, if a public hearing is requested, and after considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this Notice without further written notice.

If the Board makes modifications which are sufficiently related to the originally proposed text of the regulations, copies of the revised text will be made available to the public for a period of at least fifteen (15) days before the Board adopts the regulations as revised. Requests for copies of any changed or modified regulations may be obtained by contacting Wanda Wallis, at the above address. The Board's website may also be accessed at [www.treasurer.ca.gov/scholarshare](http://www.treasurer.ca.gov/scholarshare). The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

## AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting Wanda Wallis at the above address or website.

## AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout, may be accessed through our website at [www.treasurer.ca.gov/scholarshare](http://www.treasurer.ca.gov/scholarshare).